



DOCKET: 944-003.103-2

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of: **Wang et al**

U.S. Serial No.: **10/781,327**

Examiner: **Cho, Hong Sol**

Filed: **February 17, 2004**

Group Art Unit: **2619**

For: **ADAPTIVE SPREADING FACTOR BASED ON POWER CONTROL**

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

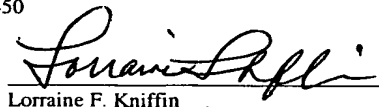
PETITION TO WITHDRAW HOLDING OF ABANDONMENT

Sir:

This Petition to Withdraw a Holding of Abandonment under 37 C.F.R.
1.181 is filed after receipt of a Notice of Abandonment.

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450


Lorraine F. Kniffin

Dated: 4/13/09

REMARKS

This Petition is filed in response to receipt of a Notice of Abandonment mailed February 9, 2009 from the USPTO in the subject patent application for failing to file a response to the non-final Office Action of April 8, 2008.

The practitioner Anatoly Fenkel and his legal Assistant Mariellen Chapdelaine are no longer with our firm and so the statements that appear below are based on the content of the file only.

A review of the file reveals that a "Further Request for Reconsideration", responsive to the non-final Office Action of April 8, 2008, was deposited with the U.S. Postal Service on June 23, 2008 with the evident intention that the filing be treated under Rule 8, but the name of the person mailing same is only typed in the Rule 8 certificate and not actually signed. However, the return postcard we received is stamped June 25, 2008 indicating that it was actually received by the USPTO mail room within the three-month shortened statutory period allowed for response. Therefore, the further Request for Reconsideration mailed June 23, 2008 was timely filed although the correct serial number 10/781,327 was not indicated correctly on the front page of the transmittal (although the serial number on the return postcard was correct). Instead, the incorrect serial number 10/702,217 was indicated.

A further review of our file indicates that the Examiner, Hong Cho, phoned Mr. Frenkel on October 14, 2008 to inform him that no response had been received to the non-final Office Action dated April 8, 2008. In reviewing the situation, Mr. Frenkel resubmitted the response filed June 25, 2008 in a mailing dated October 15, 2008 captioned "TRANSMITTAL OF RESUBMISSION OF PREVIOUSLY SUBMITTED RESPONSE TO NON-FINAL ACTION DATED APRIL 78, 2008" that was received by the USPTO mailroom on October 17, 2008 and he noted that the response that was mailed in June had not been entered in the PAIR system.

Mr. Frenkel concluded that it had been lost in the USPTO since the return postcard was returned to us stamped as received June 25, 2008 by the mailroom. A copy of the postcard was supplied by Mr. Frenkel in a communication mailed October 15, 2008 under Rule 8 signed by Mariellen Chapdelaine and received by the USPTO on October 17, 2008 as evidenced by the enclosed copy of a stamped postcard. Mr. Frenkel indicated in the resubmitted transmittal that a discussion with the Examiner's supervisor, Wing Chang on October 15, 2008, resulted in the advice from Mr. Chang to resubmit copies of the original paperwork and the stamped return receipt postcard along with a letter of explanation. This Mr. Frenkel did. Unfortunately, the transmittal again indicated the incorrect serial number of 10/702,217 instead of the correct serial number 10/781,327. This time, the postcard also had the incorrect serial number.

A further examination of our file indicates that a further "corrected" transmittal captioned "*CORRECTED* TRANSMITTAL OF TWICE PREVIOUSLY SUBMITTED RESPONSE TO NON-FINAL OFFICE ACTION DATED APRIL 8, 2008" was mailed under Rule 8 on February 2, 2009 signed on the front page by Mariellen Chapdelaine and signed by Anatoly Frenkel on the third page explaining that the communication was an explanation and *corrected* resubmission of the response originally dated and filed with the USPTO on June 23, 2008 and resubmitted again on October 15, 2008. Evidently, there had been back-and-forth telephone calls in December of 2008 and January of 2009 trying to get the situation rectified and it was finally decided on our side to file the corrected transmittal of February 2, 2009 along with a declaration of truthfulness attested to and notarized under Connecticut State Law, although not containing any reference to comparable federal law under 28 U.S.C. 1001.

The "corrected" transmittal dated February 2, 2009 was received in the USPTO on February 4, 2009 as evidenced by the enclosed copy of the stamped postcard. The explanation indicated that a telephone conversation had taken place in December of 2008 in response to a telephone call from Mr. Grassty of the USPTO (telephone number 571-272-8255) "probably to inquire" about our

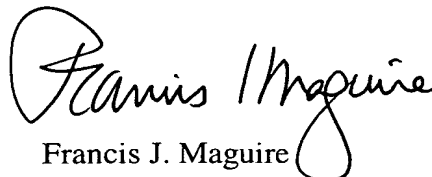
intentions for the case. It was explained that it was realized that both the original response filed June 28, 2008 and the followup filed October 17, 2008 had the wrong serial number in the transmittal but indicated that all of the other identifying information was correct and pertained to the case under discussion.

It was indicated in the telephone conversation that all of the papers were wrongly appearing on the PAIR system under the incorrect serial number and that Mr. Grassty understood the problem and responded that he would contact the Examiner right away to explain what happened so the problem could be corrected. It was explained to Ms. Chapdelaine that there would be no problem with abandonment. Mr. Frenkel explained that Ms. Chapdelaine again called on January 16, 2009 and was referred to Mr. Edin Orgard and phoned him on two occasions at 571-272-7884 leaving detailed messages for him. As explained by Mr. Frenkel, Mr. Orgard phoned Ms. Chapdelaine on January 23, 2009 and told her to call various people in order to determine the correct course of action in this matter. Mr. Frenkel indicated that Ms. Chapdelaine had not received any replies as of February 2, 2009, i.e., the date of the mailing of the corrected transmittal.

It is believed that this matter can be verified by the papers filed under the wrong serial number by the USPTO and corrected internally and the copy of the FURTHER REQUEST FOR RECONSIDERATION re-filed February 4, 2009. Therefore, withdrawal of the holding of abandonment is requested.

However, if this is not correct and the petition cannot be granted and it is necessary for the Applicant to file a Petition for Revival of an Application Unintentionally Abandoned, please consider this paper to be a Petition under Rule 137 for Unintentional Abandonment and deduct the correct fee therefor from our Deposit Account number 23-0442. In that event, it is hereby stated that the entire period of delay from the time of abandonment until now was unintentional.

Respectfully submitted,

A handwritten signature in black ink, reading "Francis J. Maguire". The signature is written in a cursive style with a large, looping initial "F".

Francis J. Maguire
Attorney for the Applicant
Registration No. 31,391

FJM/lk
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APPENDIX

Applicant: Yan Wang et al.

For: Adaptive Spreading Factor Based on Power Control

Serial No./Patent No. 10/781,327

Filed/Issued: 2/17/09

The following papers were received in the U.S. Patent and Trademark Office:

<input type="checkbox"/> RCE	<input type="checkbox"/> Issue Fee Transmittal
<input type="checkbox"/> Amendment Transmittal	<input type="checkbox"/> Transmittal of Formal Drawings
<input checked="" type="checkbox"/> Amendment and/or Response - Receipt	<input type="checkbox"/> Submission of Proposed Drawing Amend.
<input type="checkbox"/> Comp. of Filing Requirements Transmittal	<input type="checkbox"/> Drawings - No. of Sheets <u> </u>
<input type="checkbox"/> Copy of Notice of Missing Parts	<input type="checkbox"/> Fee: <u> </u> Enclosed
<input type="checkbox"/> Decl. and Power of Atty.	<input type="checkbox"/> Info. Disclosure Statement
<input type="checkbox"/> Assignment w/Cover Sheet	<input type="checkbox"/> Form PTO-1449 w/References
<input type="checkbox"/> Cert. Copy of Priority Doc. w/transmittal	<input type="checkbox"/> Req. for Certificate of Correction w/
<input type="checkbox"/> Maintenance Fee Transmittal	<input type="checkbox"/> PTO/SB/44 in duplicate

☒ Corrected Transmittal

☒ Declaration

☒ Copy of 6/23/08 transmission

Express Mail No.

Submission

Attorney: AZF

Date Mailed: 2/2/09

Docket No. 944-003,103-2

Please date stamp and return

RECEIVED
WARE, FRESSOLA, VAN DER SLUYS
& ADOLPHSON

FEB 10 2009

FILE 944-003,103-2
ANS'D. AZF